

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Halsey Post Office  
Halsey, Nebraska

Docket No. A2012-98

PUBLIC REPRESENTATIVE'S REPLY BRIEF

February 21, 2012

The Public Representative has carefully reviewed the record, participant filings, Postal Service's filings, and applicable law. The Public Representative concludes that the Postal Service based its decision to close the Halsey post office on substantial evidence in the record. The Public Representative asks that the Commission affirm the Postal Service's Final Determination to close the Halsey post office.

I. INTRODUCTION AND BACKGROUND

On December 29, 2011, the Commission established this docket to review the closing of the post office located in Halsey, Nebraska at 508 Highway 2, Halsey NE 69142 (Halsey post office).<sup>1</sup>

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<sup>1</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 29, 2011 (Order No. 1086).

The Petitions request that the Commission review the Postal Service's decision to close the Halsey post office.<sup>2</sup>

The Commission appointed a Public Representative and created a procedural schedule (including deadlines for the Postal Service filing of the administrative record for parties to intervene, file statements or briefs), and for the timely consideration and disposition of the issues raised in the Petitions. Order No. 1086 at 4-5.

The Postal Service filed the Administrative Record that included the Final Determination to close the Halsey post office on January 3, 2012.<sup>3</sup>

Two participants filed statements regarding the closure of the Halsey post office: Mic Coffman and M.L. Frodsham.<sup>4</sup> The Postal Service filed comments on February 9, 2012 in lieu of a brief, and issued an errata to those comments on February 16, 2012.<sup>5</sup>

## II. SUMMARY OF ARGUMENTS

The Postal Service contends that after the Final Determination is implemented, delivery and retail services will be provided by highway contract route (HCR) service out of the Thedford post office, located 17 miles away. Postal Service Revised Comments at 3. The Postal Service asserts that regular and effective services will be maintained to the Halsey community, but in a cost-effective manner. *Id.* at 5.

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<sup>2</sup> Petition for Review Received from Lynn Frodsham Regarding the Halsey, NE Post Office 69142 (Frodsham Petition); Petition for Review Received from Mic Coffman Regarding the Halsey, NE Post Office 69142 (Coffman Petition); Petition for Review Received from Colleen Higgins Regarding the Halsey, NE Post Office 69142 (Higgins Petition). Collectively the authors of the petitions are referred to as "Petitioners" and the documents "Petitions."

<sup>3</sup> See United States Postal Service Notice of Filing, January 3, 2012 (Postal Service Notice). The Administrative Record, filed concurrently with the Postal Service Notice, contains, as Item No. 47, the Final Determination to Close the Halsey, NE Post Office and Extend Service by Highway Contract Route Service (Final Determination).

<sup>4</sup> Participant Statement Received from Mic Coffman, January 18, 2012 (Coffman Statement); Participant Statement Received from M.L. Frodsham, January 23, 2012 (Frodsham Statement).

<sup>5</sup> United States Postal Service Comments Regarding Appeal, February 9, 2012; see *also* United States Postal Service [Revised] Comments Regarding Appeal, February 16, 2012 (Postal Service Revised Comments). The Postal Service Revised Comments correct the initial comments to reflect that the Officer in Charge (OIC) installed at the Halsey post office is the Seneca postmaster, and not a "noncareer employee" as previously indicated.

The Postal Service bases its Final Determination to close the Halsey post office on: the postmaster vacancy, minimal workload, low and declining revenue, the variety of delivery and retail options, little growth in the area, minimal impact on the community, and expected financial savings. *Id.*

The participants allege that in closing the Halsey post office, the Postal Service is creating a hardship for them in terms of time and resources by forcing them to travel to inconvenient locations that are more difficult to access in order to obtain service. Frodsham Petition at 1, Coffman Petition at 2, Higgins Petition at 2.

The Postal Service replies that customers, especially elderly customers that cannot easily travel, have options apart from a visit to the post office to obtain services. Postal Service Revised Comments at 6-7. The Postal Service notes that generally, residents of Halsey must travel to other areas for supplies and services. *Id.* at 10.

Petitioner Coffman contends that the Postal Service has not adequately addressed many of the questions put forward at the town hall meeting held June 29, 2011. Coffman Petition at 1-2. Petitioner Higgins, the recently retired postmaster of Halsey, contends that there were only a few weeks' notice given for the town hall meeting, and notes that the docket contains conflicting information about change of address and postage meter customers. Higgins Petition at 1.

The Postal Service responds that address change is required for customers opting to receive delivery service, but that the Halsey name and ZIP Code will be retained. Postal Service Revised Comments at 12.

### III. STANDARD OF REVIEW AND APPLICABLE LAW

#### A. Standard of Review

The Commission does not substitute its judgment for that of the Postal Service in considering an appeal of a closing under 39 U.S.C. § 404(d). Rather, the Commission reviews the Postal Service's determination and may find: (A) that the Postal Service's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C)

unsupported by substantial evidence in the record. Alternatively, the Commission “may affirm the determination of the Postal Service...” See 39 U.S.C. § 404(d)(5).

The remedies available to the Commission, should it determine that the Postal Service’s determination is legally flawed, are limited. The Commission may remand the determination for further consideration and suspend the effectiveness of the determination until final disposition of the appeal, but the Commission may not modify the determination of the Postal Service.

#### B. Applicable Law

The Postal Service, under 39 U.S.C. § 404 shall consider, prior to making a final determination to close or consolidate a post office: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service’s provision of “a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;” (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

The Postal Service’s final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3).

The Postal Service shall take no action to close a post office until 60 days after the final determination is made available. 39 U.S.C. § 404(d)(4).

#### IV. DISCUSSION

The Public Representative notes that the Postal Service, based on the Administrative Record and Final Determination, appears to have satisfied the applicable law and regulations associated with post office discontinuance. The Public Representative requests that the Commission affirm the Postal Service’s Final

Determination to close the Halsey post office, because the Final Determination is based on substantial evidence and is not contrary to law.

However, the Public Representative notes that in some instances, the Final Determination does not accurately reflect the Administrative Record. The Public Representative is concerned that the Final Determination has become a “form document” that does not change from case to case, despite the individual contents of the Administrative Record for each post office.

For example, the Final Determination indicates that “the office has a noncareer PMR(s)... [that] may be separated from the Postal Service...” Final Determination at 7. However, the Administrative Record and Postal Service’s Revised Comments indicate that the Officer in Charge (OIC) is in fact a postmaster from a nearby community. See Administrative Record at Item No. 15, Postal Service Revised Comments at 2. The Postal Service also contends that it complied with the posting requirements, but the Administrative Record only contains round-date stamped pages indicating that it was posted at the start of the period, not removed at the end of the period. See Administrative Record Item No. 49.

The Postal Service states that it relies on the Administrative Record to demonstrate the Final Determination’s compliance with the law. Postal Service Revised Comments at 2. However, it is difficult for affected stakeholders to view the Postal Service’s Final Determination as an objective, credible document when it contradicts the very record on which it is based.

The Public Representative asks the Commission to remind the Postal Service that its Final Determination should be accurate, based on the Administrative Record, and thoroughly reviewed to ensure that it addresses the circumstances specific to the closing at issue, rather than repeat form language that is not relevant or contradicted by the underlying record.

V. CONCLUSION

Based on a careful review the record, participant filings, Postal Service's filings, and applicable law, the Public Representative concludes that the Postal Service based its decision to close the Halsey post office on substantial evidence in the record. The Public Representative asks that the Commission affirm the Postal Service's Final Determination to close the Halsey post office.

Respectfully Submitted,

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